

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 678 of 1988

with

SPECIAL CIVIL APPLICATION No 697 of 1988

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAFATLAL INDUSTRIES LTD

Versus

UNION OF INDIA

Appearance:

MR ASHOK L SHAH for Petitioners

MRS KETTY A MEHTA for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 23/06/2000

ORAL JUDGEMENT

A common judgement is being passed in this Special Civil Application and the connected Special Civil Application No. 697 of 1998 as points involved are common.

2. The two petitioner companies before this Court in these 2 petitions had earlier a Provident Fund scheme for their employees. Thereafter, they framed a family pension scheme in accordance with the provisions of Employees Provident Fund and Family Pension Fund Act, 1952. The Pension scheme was brought into force w.e.f. 1.3.1971. Under clause 3 of the pension scheme, a family fund was to be constituted to which contributions were to be made by employees as members and by the employer. The relevant clause 3 reads as under:-

"3. Membership of the Family Pension Fund -

Subject to sub-paragraph (3) of paragraph 1, this Scheme shall apply to every employee -

(a) who becomes a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted under section 17 of the Act on or after the 1st day of March, 1971;

(b) who has been a member of the Employees' Provident Fund or of Provident Funds of Factories and other establishments exempted under Section 17 of the Act immediately before the commencement of this Scheme and opts to exercise his option under paragraph 4:

Provided that an employee who attains the age of more than (59) years on the date on which he would, but for this provision, have become eligible for membership or have been required to become a member of this Scheme shall not be eligible for membership under this Scheme."

3. The provisions of sub-clause (b) of clause 3 (above quoted) of the scheme gave an option to the existing & past employees in service, prior to the enforcement of the scheme w.e.f. 1.3.1971, to opt for the pension scheme in place of the Provident Fund Scheme earlier applicable to them. So far as the employees

appointed after 1.3.1971, the pension scheme was made compulsorily applicable and those employees inducted after 1.3.1971 had no such option.

4. Clause 3 of the scheme quoted above came up for challenge at the instance of the employees in the High Court of Bombay & the Learned Single Judge of the High Court of Bombay in Writ Petition No. 451/1980 by judgement dated 25.6.1987 struck down sub-clause 3(a) declaring it to be ultravires Article 14 of the Constitution of India. The learned Judge read down clause (b) of the said scheme as under:-

"(b) who is a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted under Section 17 of the Act and opts to exercise his option under paragraph 4:"

As a result of the judgement of the High Court of Bombay, the option to contribute to the family pension fund was equally available to past, existing and future employees in the scheme which came into force on 1.3.1971. The 2 petitions as employers stopped deduction of contribution to the fund from the employees who have not opted to the scheme on the basis of the judgement of the Bombay High Court.

5. It is better to quote the actual contents of the impugned communication dated 21.1.88 addressed by the Regional Provident Fund Commissioner, Gujarat State to both the petitioner companies.

"With reference to your letter No. R/P/111 dated 8th January, 1988 regarding judgement of Bombay High Court in case of Mafatlal Group Staff Association and others Vs. Regional Provident Fund Commissioner, Maharashtra State and others. In this connection, it may be indicated that the aforesaid judgement of the High Court of Bombay is not applicable to the Gujarat. You are, therefore, requested to please advise your client not to stop the deduction of the Family Pension Fund."

6. Learned Counsel for the petitioner contends that the petitioner companies were bound to obey the judgement and directions of the High Court of Bombay rendered between the employees of the company. It was erroneous on the part of the Regional Provident Fund Commissioner to issue the impugned communication (quoted above). On

behalf of the Union of India, a reply affidavit has been filed but no Counsel appears. In the reply affidavit it has been stated that against the judgement of the Learned Single Judge of the Bombay High Court, an appeal has been preferred in that very court and it was at the relevant time awaiting admission. The Counsel for the parties at this distance of time are unable to state as to whether the judgement of the Learned Single Judge of the High Court of Bombay holds the field or has been overruled. Time was repeatedly granted to the parties to inform this Court as to whether any appeal against the judgement of the Learned Single Judge was preferred and has been allowed or not. The order sheet of this Court shows that despite repeated opportunities none of the parties have been able to collect that information.

7. After hearing the Learned Counsel for the petitioner, in the opinion of this Court the petitioner companies are bound by the judgement of the Bombay High Court to apply the family pension scheme uniformly to all employees in the manner directed by the Court. Merely because some of the employees of the petitioner companies are in Gujarat, there is no ground to apply the scheme differently to them and contrary to the directions of the High Court of Bombay.

8. In the circumstances, the petitions are allowed. It is directed that the Regional Provident Fund Commissioner, Gujarat State will not act upon the impugned communication dated 21.1.1988, if the judgement of the Learned single Judge of the Bombay High Court (Supra) still holds the field and has not been upset by any Higher Court. Rule made absolute. In the facts and circumstances of the case, the parties shall bear their own costs.

(D.M.Dharamadhikari, CJ)

jitu